IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.425 OF 1989

The State of Maharashtra, .. Appellant
(Orig.Complainant)

Vs

1. Ramdas Kisan Yerande,
Age 23 yrs, Occu.-Agriculture.

2. Govind Kisan Yerande,
Age 21 yrs, Occ.-Agriculture.

3. Sou.Nakabai Kisan Yerande,
Age 45, Occ. Agri & Household,

All Nos 1 to 3, residing at
Thugaon, Taluka- Ambegaon,
Dist-Pune.

4. Sou. Savitribai Shankar Kale,
Age 28 yrs, Occ. Agri & houshold,
reiding at Chaskudalwadi,
Taluka Khed, Dist-Pune.

5.Dagadu Bhagu Gopale,
Age 35 yrs, Occ. Agriculture
residing at Vahald, Taluka Khed
Dist.Pune .. Respondents.
Accused.

Smt A.S.Pai, APP for the appellant.
Ms Sawita Suryawanshi,Advocate (appointed) for the respondents. (Absent)

CORAM : Smt.Ranjana Desai &
D.B.Bhosale, JJ.

DATE : 8th July, 2005.

JUDGMENT: (Per D.B.Bhosale, J.)

1. This appeal is directed against the Judgment and order dated 27th March, 1989 passed by the learned Addl.Sessions Judge, Pune in Sessions Case No. 44 of 1988, by which all the five accused, who were charged and tried for the offences punishable under sections 147,148 and 307 read with section 149 and under section 307 read with section 34 of IPC, have been acquitted.

2. The prosecution case, sans unnecessary details, is that all the accused and the victims are, inter-se, related and have their agricultural lands adjacent to each others. Accused nos.1 and 2 are the sons of accused no.3; accused no.4 is the daughter of accused no.3 and accused no.5 is her son-in-law. On 9.11.1987 at about 10 am, there was a quarrel between Shilika (PW 6), her husband Sudam (PW 10) and their children Usha and Balu (P.W.7 & PW 9) respectively, on one hand and on the other hand Kisan Bala, father of accused nos 1, 2 and 4 and husband of accused no.3. The quarrel cropped up on account of the trespass by Kisan in the land of Shilika and Sudam for which they lodged a complaint with Manchar police station on 9.11.1987. On the very day in the evening at 5 pm, when Shilika, Usha, Balu and Sudam were returning to their home and when they reached

the land known as "Hadaki Hadavla", they saw the accused persons coming from the opposite direction. Accused no.1 was armed with an axe; accused nos 2 and 3 with wooden sticks and accused no.5 had a stone. They all allegedly assaulted Sudam and Shilika in which Sudam sustained severe bleeding injuries. Sudam allegedly became unconscious. Sudam and his family were taken to the police station and from there to the Sasoon Hospital by Madhukar Yerande (PW 2). A complaint was lodged by Shilika (PW 6). In pursuance of the complaint, the investigation was set in motion by PSI Bharat Patil (PW 11) On completing the investigation he submitted the chargesheet. Since the offences were triable by the Sessions Court, the case was committed to the Court of Sessions at Pune. The defence of the accused persons was of total denial. According to accused nos 1 and 2, the complainant and her family met them on the road when Sudam abused accused no.2 and assaulted him. There was a scuffle in which accused no.2 fell down when Sudam sat on his chest and attempted to strangulate him by throttling. Shilika and her children assaulted accused no.1 with stones. In the scuffle, the injuries were suffered by the complainant and her family members as also by accused nos 1 and 2. It appears from the defence propounded

by accused nos 1 and 2 that accused nos.3 to 5 were not at all there and they have been falsely implicated merely because they happened to be near relatives of Kisan Bala. To bring home the guilt of the accused persons, the prosecution examined as many as 13 witnesses consisting of complainant-Shilika (PW 6), her husband Sudam (PW 10), and their children Usha and Balu (PWs 7 and 9) as also three doctors, viz. Dr. Ghone (PW 3), Dr.Shailesh (PW 8) and Dr.Salunke (PW 4), two panchas viz. Bagal and Bhor (PWs 1 and 5) respectively, Yerande (PW 2), neighbour of the complainant, who carried the injured persons to the police station and then to the hospital, and three police personnel.

3. We heard the learned Addl.Public Prosecutor and carefully perused the evidence of the victims, the eye-witness and the doctors. From perusal of the evidence of Shilika, Sudam, Usha and Balu, we found that there were several discrepancies, contradictions and omissions in their testimonies in so far as the main incident of assault is concerned. The discrepancies are in respect of the actual overt acts attributed to the different accused persons. They do not corroborate each other and in view thereof we perused the evidence of Dr.Salunke (PW 4) and

Dr.Shailesh (PW 8). They examined complainant Shilika and her husband Sudam respectively who allegedly sustained multiple injuries on their persons. We tried to find from their evidence whether the medical evidence supports the ocular version and/or it is consistent with the testimonies of the eye-witnesses. Interestingly, we found that the medical evidence does not support the ocular version at all. The victims and the eye-witnesses as well state in their testimonies as to what weapon each of the accused was armed with and on which part of the victims' body they inflicted injuries. However, the injury certificates of Shilika and Sudam do not support to their version and/or they are not consistent with the ocular version. For example, it was alleged that accused no.1 inflicted an axe blow on Sudam's head, however, Dr Shailesh (PW 8) did not find an injury on the head of Sudam which could be inflicted by axe. Similarly, according to the eye-witnesses, Sudam was assaulted on his neck, whereas no injury was found on the neck or shoulder of Sudam. The learned trial Judge, after considering the ocular versions of Shilika (PW 6), Sudam (PW 10), Usha and Balu (PWs 7 and 9), in the light of the injuries described by the doctors PW.4 and P.W.8 in the injury certificates (Exhibits 25 and 37) of

Shilika and Sudam has disbelieved these witnesses holding that they are not reliable. In other words, the inconsistencies in the medical evidence and the ocular version has made their testimonies doubtful. The relevant observations in the judgment of the trial Court read thus :

> "16. ".. ... Now all these witnesses unequivocally state that the axe blow on Sudam's head was dealt with the blade portion of an axe and a stone had hit Sudam either on his shoulder or near his neck. If we turn to the medical evidence of PW-8 Dr.Puntambekar, we find that he had found two contused lacerated wounds described earlier by me and both these wounds were on the head. In other words, no injury has been caused on the neck or shoulder of Sudam. Further more, a blade of an axe would cause an incise wound and Dr.Puntambekar had stated that cause of both the injuries was hard and blunt object like stick or rear portion of an axe blade. But it is not at all the case of any of these four eye-witnesses that blow with butt end of an axe was given on Sudam's head. So far as the injuries on the person of Shilika are concerned, she has stated that accused no.2 gave her a Shival blow on her back and he gave another blow on her left leg and she had then started running and then accused No.1 had dealt an axe blow on her left foot one axe blow on her head and another axe blow on her cheek and all these blows were given with the blade portion. She has stated that accused no.3 had given her a stick blow on her left and right side of her back and accused No.4 had given fist blows on her face. Usha had broadly corroborated her mother. But PW-4 Dr.Gautam Salunke who has examined Shilika and who has taken on X-ray of her left foot and had found fracture, has stated about the finding or give injuries which do not corroborate Shilika at all. The medical evidence shows one contusion on her right forearm dorsal aspect, another on her

> left forearm but she has not stated about any of them. The medical evidence shows about a contusion on right parietal region. But she has not stated about it as according to her axe blow with blade portion has been given on her head. The medical evidence shows a punctured wound on her left foot and on dorsal aspect and corresponding fracture of the 3rd and 4th matatarsel shaft. Dr.Gautam Salunkhe has stated that this injury no.4 could have been caused with axe (Art.20) but for that it is necessary to hold the axe vertically and then the blow must be thrusted downwards. However, that is not at all the case of Shilika herself. Thus, we find that the medical evidence does not at all corroborate the evidence of Shilika and Sudam. It is not their case that they were injured with the butt end of an axe. Mr Deshmukh has rightly argued that if medical evidence namely that contusions on the person of Sudam and Shilika were caused with the butt end of the axe, is to be accepted, then this fact itself throws the prosecution case in respect of an offence under section 307 of the IPC to the winds. So far as Usha is concerned, it is her case that she was assaulted by accused no.2, who had given one Shival blow on her back and accused nos 3 and 4 had caught her hair. According to her mother Shilika, accused no.3 had assaulted her with stick and accused no.4 had given her fist blows. However, there is no medical evidence at all to support any of these versions. We thus find that the prosecution evidence is totally inconsistent with the medical evidence."

4. It is clear from the testimonies of the victims and the eye-witnesses as also from the medical certificates and the opinion expressed by the doctors, the whole truth is not forthcoming. Moreover, the accused persons also sustained injuries in the alleged incident and none of the witnesses has explained the injuries sustained by the accused

persons. The learned trial Judge has taken a serious note of this fact and observed that the testimonies of the victims and their children create a serious doubt about its veracity. In so far as the evidence in the nature of recovery of the weapons is concerned, the manner in which the panchanmas were drawn it would not be possible for us to accept that piece of evidence. In our opinion, the learned trial Judge has rightly disbelieved the evidence of Bhor (PW 5), who acted as panch in the panchnama of recovery of the axe. From perusal of the report of the Chemical Analyst, we found that it does not support the prosecution case at all. The learned trial Judge has considered all these aspects in proper perspective and has rightly rejected the prosecution evidence. We reappreciated the entire evidence. Merely because on reappraisal of the evidence it is possible to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below, would not constitute a valid and sufficient ground for setting aside the acquittal. The law is well settled that merely because the two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the appellate court cannot legally interfere with the

order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous. This position of law is settled by the Apex court in AIR 1987 SC 1083, AIR 1988 SC 1158,AIR 1990 SC 2134. In our opinion, the findings recorded by the trial Court are not perverse. We did not find manifest error worth the name committed by the trial Court. The view taken by the trial Court was plausible one. If the order of acquittal is allowed to stand it would not result miscarriage of justice. On appreciation of the evidence we are satisfied that the prosecution has miserably failed to bring home the guilt and, therefore, the trial Court proceeded to acquit all the accused persons. In the result, there is no strong and compelling reason to interfere with the order of acquittal made on proper appreciation of the evidence on record. We, therefore, dismiss the appeal against the acquittal. The bail bonds, if any, executed under section 390 Cr.P.C stand cancelled.

(D.B.Bhosale, J.) **(Smt Ranjana Desai, J.)**

HIGH COURT
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.425 OF 1989
(The State of Maharashtra Vs. 1. Ramdas Kisan Yerande and ors)

Date of Judgment:
8th July, 2005.

For approval and signature

THE HON'BLE SMT.JUSTICE RANJANA DESAI.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?

FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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CRIMINAL APPEAL NO.425 OF 1989

(The State of Maharashtra Vs. 1. Ramdas Yerande & ors)

Date of Judgment:
8th July, 2005.

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mrs A.S.Pai, APP for the Appellant.
Ms. Sawita Suryawanshi, Adv (appointed) for the respondents. (Absent)

CORAM: Smt Ranjana Desai &
D.B.Bhosale, JJ.

DATED: 8th July, 2005.

P.C.:

For the reasons to be recorded separately in the accompanying judgment, the Court dismisses this appeal. The bail bond, if any, executed under section 390 Cr.P.C, stand cancelled.

Dt: 12.7.05 For Registrar